

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

08/28/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000866

FILED: _____

STATE OF ARIZONA

ROBERT KENT MCCARTHY

v.

PATRICK JOHN NATONIE

JAMES T BLOMO

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #5856819

Charge: 1. DUI
2. DUI W/AC .10 OR MORE
3. FAILURE TO STOP AT RED LIGHT SIGNAL
4. FAILURE TO DRIVE ON RIGHT SIDE OF ROADWAY

DOB: 03/27/54

DOC: 03/31/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This case has been under advisement since it was submitted to the Court without oral argument on July 29, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has reviewed the record of the proceedings from the Phoenix City Court, and the Memoranda submitted by counsel.

Appellant, Patrick John Natonie, was arrested on March 31, 2001 and charged with:

1. Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1);
2. Driving with a Blood Alcohol Content of .10 or Higher, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(2);
3. Failure to Stop at a Red Light, a civil traffic matter in violation of A.R.S. Section 28-645(A)(3);
4. Failure to Drive on the Right Side of the Roadway, a civil traffic offense in violation of A.R.S. Section 28-721(A).

Appellant entered pleas of Not Guilty and Not Responsible to these charges. Thereafter, Appellant filed a Motion in Limine to Suppress the results of the Intoxilyzer machine used to measure Appellant's blood alcohol content. Appellant contended (and presented evidence to support his motion) that the Intoxilyzer machine was not working accurately and properly, and contended that the State would not be able to prove pursuant to A.R.S. Section 28-1323(A) that the intoxilyzer machine was "in proper operating condition." The trial court held an evidentiary hearing on Appellant's motion on December 11, 2001. At that hearing, Chester Flaxmeyer, testified for Appellant; Kevin Albrecht testified for State. The trial court ruled as follows:

And I've concluded that the defense
Motion to Suppress, slash, In Limine is denied.

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And let me just explain a little bit.

I think the cases of Stock and Daubert indicate that the change in the statute allows the admission of the records, as long as they are qualifying - - or as long as there are sqaps that show the machine is operating, and basically goes to the weight of the evidence, in my opinion. You could argue that there are deficiencies in the machine, and that evidence can certainly be considered by a jury in determining whether or not the reading is reliable, but it is not legally inadmissible.¹

This Court's review of the trial judge's ruling and conclusions of law on Appellant's Motion in Limine/To Suppress are made *de novo*.² This Court must review the trial judge's ruling on such a motion using an abuse of discretion standard. That is, this Court should reverse only when it finds that the trial judge abused his or her discretion.³

In this case the trial judge correctly concluded that there was evidence presented by the State/Appellee that supports a finding that the intoxilyzer machine was operating properly at the time Appellant's blood alcohol content was measured. The trial judge acknowledged that there was evidence to the contrary, but that evidence affects the weight to be given to the intoxilyzer reading, not its admissibility. This Court finds no error in the trial court's ruling.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed by the Phoenix City Court in this case.

¹ R.T. of December 12, 2001, at pages 118-119.

² State v. Gonzalez-Gutierrez, 187 Ariz. 116, 927 P.2d 776 (1996); State v. Johnson, 184 Ariz. 521, 911 P.2d 527 (App. 1994).

³ State v. Emery, 141 Ariz. 549, 688 P.2d 175 (1984).

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IT IS FURTHER ORDERED remanding this case back to the
Phoenix City Court for all further and future proceedings in
this case.